

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1822

AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-22-2-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c).

(b) The agency shall cause a notice of a public hearing to be published once in one (1) newspaper of general circulation in Marion County, Indiana. To publish the newspaper notice, the agency shall directly contract with the newspaper.

(c) The agency shall cause:

- (1) a notice of public hearing; ~~and~~
- (2) the full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter); **and**
- (3) **after June 30, 2005, any statement required by IC 4-22-2.1-5;**

to be published once in the Indiana Register. To publish the notice, ~~and~~ proposed rule, **and statement by IC 4-22-2.1-5** in the Indiana Register, the agency shall submit the text to the publisher. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

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(d) The agency shall include in the notice required by subsections (b) and (c):

- (1) a statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened;
- (2) a general description of the subject matter of the proposed rule; and
- (3) an explanation that the proposed rule may be inspected and copied at the office of the agency.

However, inadequacy or insufficiency of the subject matter description in a notice does not invalidate a rulemaking action.

(e) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least twenty-one (21) days before the public hearing required by section 26 of this chapter is convened.

(f) This section does not apply to the solicitation of comments under section 23 of this chapter.

SECTION 2. IC 4-22-2-28, AS AMENDED BY HEA 1003-2005, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28. (a) ~~The Indiana economic development corporation may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. The Indiana economic development corporation established by IC 5-28-3-1:~~

- (1) shall review a proposed rule that:
  - (A) imposes requirements or costs on small businesses (as defined in IC 4-22-2.1-4); and
  - (B) is referred to the corporation by an agency under IC 4-22-2.1-5(c); and
- (2) may review a proposed rule that imposes requirements or costs on businesses other than small businesses (as defined in IC 4-22-2.1-4).

~~After conducting a review under subdivision (1) or (2), the corporation may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on small businesses or other businesses.~~ The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development corporation concerning the corporation's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(b) The agency shall ~~also~~ submit a proposed rule with an estimated economic impact greater than five hundred thousand dollars (\$500,000) on the regulated entities to the legislative services agency

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after the preliminary adoption of the rule. Except as provided in subsection (c), before the adoption of the rule, the legislative services agency shall prepare, not more than forty-five (45) days after receiving a proposed rule, a fiscal analysis concerning the effect that compliance with the proposed rule will have on the:

- (1) state; and
- (2) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal analysis, **including any economic impact statement prepared by the agency under IC 4-22-2.1-5**. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

(c) With respect to a proposed rule subject to IC 13-14-9:

- (1) the department of environmental management shall give written notice to the legislative services agency of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and
- (2) the legislative services agency shall prepare the fiscal analysis referred to in subsection (b) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

SECTION 3. IC 4-22-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) After an agency has complied with sections 26, 27, and 28 of this chapter, the agency may:

- (1) adopt a rule that is identical to a proposed rule published in the Indiana Register under section 24 of this chapter;
- (2) subject to subsection (b), adopt a rule that consolidates part or all of two (2) or more proposed rules published in the Indiana Register under section 24 of this chapter and considered under section 27 of this chapter;
- (3) subject to subsection (b), adopt part of one (1) or more proposed rules described in ~~subsection (a)(2)~~ **subdivision (2)** in two (2) or more separate adoption actions; or

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(4) subject to subsection (b), adopt a revised version of a proposed rule published under section 24 of this chapter and include provisions that did not appear in the published version, **including any provisions recommended by the Indiana economic development corporation under IC 4-22-2.1-6(a), if applicable.**

(b) An agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register under section 24 of this chapter, unless it is a logical outgrowth of any proposed rule as supported by any written comments submitted:

- (1) during the public comment period; **or**
- (2) **by the Indiana economic development corporation under IC 4-22-2.1-6(a), if applicable.**

SECTION 4. IC 4-22-2.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

**Chapter 2.1. Rules Affecting Small Businesses**

**Sec. 1. Except for a rule that is the subject of a rulemaking action under IC 13-14-9, this chapter applies to a rule for which the notice required by IC 4-22-2-23 is published by an agency after June 30, 2005.**

**Sec. 2. The definitions in IC 4-22-2-3 apply throughout this chapter.**

**Sec. 3. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.**

**Sec. 4. As used in this chapter, "small business" means any person, firm, corporation, limited liability company, partnership, or association that:**

- (1) **is actively engaged in business in Indiana and maintains its principal place of business in Indiana;**
- (2) **is independently owned and operated;**
- (3) **employs one hundred (100) or fewer full-time employees;**
- and**
- (4) **has gross annual receipts of five million dollars (\$5,000,000) or less.**

**Sec. 5. (a) If an agency intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses, the agency shall prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented as described in subsection (b). The statement**

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required by this section must include the following:

- (1) An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.
- (2) An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.
- (3) A estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule. The agency is not required to submit the proposed rule to the legislative services agency for a fiscal analysis under IC 4-22-2-28 unless the estimated economic impact of the rule is greater than five hundred thousand dollars (\$500,000) on all regulated entities, as set forth in IC 4-22-2-28.
- (4) A statement justifying any requirement or cost that is:
  - (A) imposed on small businesses by the rule; and
  - (B) not expressly required by:
    - (i) the statute authorizing the agency to adopt the rule; or
    - (ii) any other state or federal law.

The statement required by this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

- (5) A regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The analysis under this subdivision must consider the following methods of minimizing the economic impact of the proposed rule on small businesses:

- (A) The establishment of less stringent compliance or reporting requirements for small businesses.
- (B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
- (C) The consolidation or simplification of compliance or reporting requirements for small businesses.
- (D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.
- (E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

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If the agency has made a preliminary determination not to implement one (1) or more of the alternative methods considered, the agency shall include a statement explaining the agency's reasons for the determination, including a reference to any data, studies, or analyses relied upon by the agency in making the determination.

(b) For purposes of subsection (a), a proposed rule will be fully implemented with respect to small businesses after:

(1) the conclusion of any phase-in period during which:

(A) the rule is gradually made to apply to small businesses or certain types of small businesses; or

(B) the costs of the rule are gradually implemented; and

(2) the rule applies to all small businesses that will be affected by the rule.

In determining the total annual economic impact of the rule under subsection (a)(3), the agency shall consider the annual economic impact on all small businesses beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total annual economic impact of a rule under subsection (a)(3).

(c) The agency shall:

(1) publish the statement required under subsection (a) in the Indiana Register as required by IC 4-22-2-24; and

(2) deliver a copy of the statement, along with the proposed rule, to the Indiana economic development corporation not later than the date of publication under subdivision (1).

Sec. 6. (a) Not later than seven (7) days before the date of the public hearing set forth in the agency's notice under IC 4-22-2-24, the corporation shall do the following:

(1) Review the proposed rule and economic impact statement submitted to the corporation by the agency under section 5(c) of this chapter.

(2) Submit written comments to the agency on the proposed rule and the economic impact statement prepared by the agency under section 5 of this chapter. The corporation's comments may:

(A) recommend that the agency implement one (1) or more of the regulatory alternatives considered by the agency under section 5(a)(5) of this chapter;

(B) suggest regulatory alternatives not considered by the

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agency under section 5(a)(5) of this chapter;

(C) recommend any other changes to the proposed rule that would minimize the economic impact of the proposed rule on small businesses; or

(D) recommend that the agency abandon or delay the rulemaking action until:

(i) more data on the impact of the proposed rule on small businesses can be gathered and evaluated; or

(ii) less intrusive or less costly alternative methods of achieving the purpose of the proposed rule can be effectively implemented with respect to small businesses.

(b) Upon receipt of the corporation's written comments under subsection (a), the agency shall make the comments available:

(1) for public inspection and copying at the offices of the agency under IC 5-14-3;

(2) electronically through the electronic gateway administered by the intelenet commission; and

(3) for distribution at the public hearing required by IC 4-22-2-26.

(c) Before finally adopting a rule under IC 4-22-2-29, and in the same manner that the agency considers public comments under IC 4-22-2-27, the agency must fully consider the comments submitted by the corporation under subsection (a). After considering the comments under this subsection, the agency may:

(1) adopt any version of the rule permitted under IC 4-22-2-29; or

(2) abandon or delay the rulemaking action as recommended by the corporation under subsection (a)(2)(D), if applicable.

Sec. 7. Before an agency may act under IC 4-22-2.5 to readopt a rule to which the chapter applies, the agency must conduct the review required under IC 4-22-2.5-3.1.

Sec. 8. (a) This section applies to a small business that is adversely affected or aggrieved by a rule that:

(1) is subject to this chapter;

(2) is finally adopted by an agency under IC 4-22-2-29; and

(3) has taken effect under IC 4-22-2-36.

(b) In addition to or instead of filing a complaint with the administrative rules oversight committee under IC 2-5-18-8, and subject to subsection (c), a small business described in subsection (a) may file, in a court having jurisdiction, an action seeking a determination of the agency's compliance with the requirements of this chapter during the rulemaking process. Upon receipt of a

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complaint under this section, the court shall, at the earliest date possible, hear evidence on the matter and make a determination as to the agency's compliance with this chapter during the rulemaking process. If the court determines that the agency failed to comply with one (1) or more requirements of this chapter, the court may issue an order or injunction enjoining the agency from enforcing the rule with respect to the complaining small business and any similarly situated small businesses. A determination of the court under this section is final, subject to the right of direct appeal by either party.

(c) A small business that seeks a determination by a court under subsection (b) must file the action described in subsection (b) not later than one year (1) after the date the rule described in subsection (a) takes effect under IC 4-22-2-36.

SECTION 5. IC 4-22-2.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) An agency that wishes to readopt a rule that is subject to expiration under this chapter must:

- (1) follow the procedure for adoption of administrative rules under IC 4-22-2; and
- (2) for a rule that expires under this chapter after June 30, 2005, conduct any review required under section 3.1 of this chapter.

(b) An agency may adopt a rule under IC 4-22-2 in anticipation of a rule's expiration under this chapter.

(c) An agency may not use IC 4-22-2-37.1 to readopt a rule that is subject to expiration under this chapter.

SECTION 6. IC 4-22-2.5-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.1. (a) This section applies to a rule that:

- (1) expires under this chapter after June 30, 2005; and
- (2) imposes requirements or costs on small businesses.

(b) As used in this section, "small business" has the meaning set forth in IC 4-22-2.1-4.

(c) Before an agency may act under section 3 of this chapter to readopt a rule described in subsection (a), the agency shall conduct a review to consider whether there are any alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would otherwise minimize the economic impact of the proposed rule on small businesses. In reviewing a rule under this section, the agency shall consider the following:

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- (1) The continued need for the rule.
- (2) The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.
- (3) The complexity of the rule, including any difficulties encountered by:

- (A) the agency in administering the rule; or
- (B) small businesses in complying with the rule.

- (4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

- (5) The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

(d) This subsection applies to a rule that was adopted through a rulemaking action initiated by the agency under IC 4-22-2-23 after June 30, 2005. In reviewing the rule under this section, the agency shall reexamine the most recent economic impact statement prepared by the agency under IC 4-22-2.1-5. The agency shall consider:

- (1) the degree to which the factors analyzed in the statement have changed since the statement was prepared; and

- (2) whether:

- (A) any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5); or

- (B) any regulatory alternatives not considered by the agency at the time the statement was prepared; could be implemented to replace one (1) or more of the rule's existing requirements.

(e) After conducting the review required by this section, the agency shall:

- (1) readopt the rule without change, if no alternative regulatory methods exist that could minimize the economic impact of the rule on small businesses while still achieving the purpose of the rule;
- (2) amend the rule to implement alternative regulatory methods that will minimize the economic impact of the rule on small businesses; or
- (3) repeal the rule, if the need for the rule no longer exists.

SECTION 7. IC 4-22-2.5-4 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as provided in subsection (b) **and subject to section 3.1 of this chapter**, an agency may readopt all rules subject to expiration under this chapter under one (1) rule that lists all rules that are readopted by their titles and subtitles only. A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If, not later than thirty (30) days after an agency's publication of notice of its intention to adopt a rule under IC 4-22-2-24 using the listing allowed under subsection (a), a person submits to the agency a written request and the person's basis for the request that a particular rule be readopted separately from the readoption rule described in subsection (a), the agency must:

- (1) readopt that rule separately from the readoption rule described in subsection (a); and
- (2) follow the procedure for adoption of administrative rules under IC 4-22-2 with respect to the rule.

(c) If the agency does not receive a written request under subsection (b) regarding a rule within thirty (30) days after the agency's publication of notice, the agency may:

- (1) submit the rule for filing with the secretary of state under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule; or
- (2) elect the procedure for readoption under IC 4-22-2.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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